

**PLAINTIFF'S REQUEST FOR PRODUCTION OF INTERNAL AUDIT DOCUMENTS**

November 19, 2013

**VIA E-MAIL**

The Honorable Denise L. Cote  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 1610  
New York, NY 10007

**Re: *FHFA v. HSBC North America Holdings, et al.*, No. 11-cv-6189**

Dear Judge Cote:

We write on behalf of plaintiff FHFA to respectfully request the production of discovery from the defendants in the above-named action (collectively, "HSBC"). FHFA is at an impasse with HSBC with respect to the production of documents relating to internal audits of its Mortgage-Backed Securities/Asset-Backed Securities ("MBS/ABS") group (the "Audit Documents"). Despite significant efforts on the part of FHFA, HSBC continues to improperly assert that the Audit Documents are not responsive to FHFA's document requests. On the contrary, the Audit Documents are responsive to several, including those for documents (1) "relating to any analysis or review conducted by Defendants or on their behalf regarding . . . internal risk management relating to the Mortgage Loans, Securities, or Securitizations" (FHFA's Second Request for Production No. 8); (2) "related to any pre-closing analysis, review, or other due diligence conducted with regard to the Mortgage Loans and the Securitizations" (FHFA's First Request for Production No. 3); and (3) "relating to the analysis, valuation, credit quality, and pricing of the Mortgage Loans, Securities, or Securitizations" (FHFA's Second Request for Production No. 5). The parties are at an impasse and require the Court's intervention.

The MBS/ABS group at HSBC Securities in New York included the Whole Loan Trading Desk ("WLT Desk"), which was responsible for the acquisition of whole loans and their securitization into residential mortgage-backed securities (including the Mortgage Loans and Securitizations at issue in this case). Due diligence of the Mortgage Loans was handled by HSBC Securities (HSI)'s risk management team. In the course of document review, FHFA identified references to internal audits of the MBS/ABS group that took place in 2006. Shortly thereafter, the head of HSI risk management, Christina (Baldwin) Carr, testified extensively

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<sup>1</sup> FHFA wrote to HSBC on September 11, 2013, requesting the production of all Audit Documents. (9/11/13 E. Cochran to J. Conlon Letter, Ex. 2, at 5.) HSBC refused to produce them. (9/26/13 J. Conlon to E. Cochran Letter, Ex. 3, at 5-6.) On October 30, 2013, FHFA repeated its request for the Audit Documents, following Ms. Carr's testimony. (10/30/13 E. (footnote continued)

[REDACTED]  
[REDACTED] Last week, when shown documents referring to [REDACTED]  
[REDACTED] January 2006, Gerard Mattia, HSBC's chief financial  
officer for global banking and markets, confirmed [REDACTED]  
[REDACTED]  
[REDACTED]

Thus, contrary to HSBC's assertions, the Audit Documents are responsive to several of FHFA's Requests for Production:

***Documents relating to analysis or review of internal risk management.*** HSBC's employees' testimony is clear; these audits reviewed the performance by HSBC's risk management team in conducting due diligence. [REDACTED]  
[REDACTED]

As such, documents relating to the audits fall into the category of "documents . . . relating to any analysis or review conducted by Defendants or on their behalf regarding . . . internal risk management relating to the Mortgage Loans, Securities, or Securitizations." In fact, the chief risk officer of HSBC's North American holding company [REDACTED]  
[REDACTED]

***Documents relating to due diligence.*** Additionally, Audit Documents which analyze HSBC's due diligence process applicable to the loans and transactions at issue here – and thus implicate directly HSBC's due diligence defense – are indisputably "[d]ocuments related to any pre-closing analysis, review, or other due diligence conducted with regard to the Mortgage Loans and the Securitizations."

***Documents relating to valuation.*** Finally, Audit Documents that address HSBC's valuation practices with respect to Mortgage Loans are also "documents . . . relating to the analysis, *valuation*, credit quality, and pricing of the Mortgage Loans, Securities, or Securitizations." (FHFA's Second Request for Production No. 5.)<sup>2</sup>

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Cochran to J. Conlon Letter, Ex. 4, at 3.) Last week, HSBC again refused to produce these documents. (11/11/13 J. Conlon to E. Cochran Letter, Ex. 5, at 3-4.)

<sup>2</sup> HSBC contends that FHFA did not specifically request the production of these documents until after the close of production. As set forth above, the Audit Documents are well within FHFA's prior requests, which need not call out the documents by name. In any case, the Court has "made clear that targeted requests with respect to discovery . . . would be responded to, where I found them to have merit." (8/14/13 Hr'g Tr., 51:10-12.) In this case, the request is (footnote continued)

Accordingly, FHFA respectfully requests that the Court order the production of all documents relating to internal audits of the MBS/ABS group carried out from 2005-2007.

Respectfully submitted,

s/Jonathan B. Oblak

Jonathan B. Oblak

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meritorious – the documents go directly to HSBC’s due diligence defense – and the burden of such a narrowly-focused production is slight.